

BEFORE THE FEDERAL ELECTION COMMISSION

FOUNDATION FOR ACCOUNTABILITY AND
CIVIC TRUST,

Complainant,

vs.

NANCY ROTERING and NANCY ROTERING
FOR CONGRESS,

Respondents.

MUR 6948

OFFICE OF THE CLERK

2015 MAR 23 PM 12:53

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FEDERAL ELECTION COMMISSION

**THERE IS "NO REASON TO BELIEVE" A VIOLATION HAS
OCCURRED, BASED UPON A REVIEW OF COMPLAINANT'S
ALLEGATIONS AND THE COMMITTEE'S RESPONSE.**

I.

INTRODUCTION

This case is the result of Complainant's misinterpretation of 11 C.F.R. 100.72. During a relatively brief 5-week¹ "testing the waters" period in early 2015, Respondents admittedly had a successful and encouraging campaign exploration, appropriately meeting with potential supporters, discussing the structure of a potential campaign, and asking people to contribute to the exploratory committee. The Candidate was most cautious in describing all activities as exploratory—because they were. Only in early March of 2015 did the Candidate make the actual decision to run. The FEC Forms 1 and 2 were then timely filed shortly afterwards.

A review of Complainant's sole objection is that this Committee and Candidate, which began an exploratory or "testing the waters" campaign by obtaining a financial donation on January 23, 2015 (and had raised over \$5,000 by January 29, 2015), was legally obligated to file

¹ Complainant contends the "testing-the-waters" period began when the Committee went over \$5,000 in funds raised, on January 29, 2015. The Candidate decided to run in early March, 2015, within 15 days prior to her timely filing her FEC Form 2 on March 17th, a total of as little as 33 days.

the Committee's Form 2 with the FEC within 15 days thereafter, or by February 13, 2015, solely because the \$5,000 threshold had been met.² That is most certainly *not* the law. In essence, Complainant wants to punish the Candidate because, during her very brief "testing the waters" period, she was "too successful".

To the contrary, because this potential Candidate (and exploratory committee) never held out to the public that a decision to run had been made (because it most assuredly had *not* been made until early March of 2015), and because all expenditures made during the "testing the waters" period of time were spent upon only appropriate exploratory purposes, there is "no reason to believe" a violation of FECA has occurred. The FEC Forms 1 and 2 were timely filed on March 18, 2015, less than two weeks after the Candidate's decision to end exploration and actually enter the race.

The standard applied by the Commission is explained at FEC Guidebook for Complainants and Respondents (May 2012) at 13. Under FEC Rules, Respondents are entitled to a finding of "no reason to believe" an FECA violation has occurred if: no violation is factually alleged; or the alleged violation is either too vague or not credible; or the conduct described is not a violation of the Act.

Because the Candidate and Committee scrupulously complied with the "testing the waters" exception during those early weeks of exploration, there is "no reason to believe" a FECA violation has occurred. Thus, contrary to Complainant's allegations, no January filing

² The fifteen day rule after a candidate declares for filing Form 2 and 10 days hence for Form 1 is set forth at 11 CFR 101.1(a) and 102.1(a). Those forms were timely filed by this campaign on March 17, 2015, when the Candidate ended her very brief less-than-two-month period of "testing the waters". As will be seen *infra*, there were no inappropriate candidate campaign activities outside of lawful "testing the waters" activities for that period. And indeed, Complainant alleges none.

trigger occurred.³

II.

THE "TESTING THE WATERS" EXCEPTION, AS INTERPRETED BY THE COMMISSION IN FIORINA LEAVES NO DOUBT THAT THE FECA WAS FULLY ADHERED TO BY RESPONDENTS.

Pursuant to 11 C.F.R. 100.72(b) and 100.131(b), the Commission should look at five factors in determining whether a candidate has undertaken activities that indicate a person has decided to become a candidate: 1) using general public political advertising to publicize her intention to campaign for federal office; 2) raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after she becomes a candidate; 3) making or authorizing written or oral statements that referred to herself as a candidate for this congressional seat; 4) conducting activities in close proximity to the election or over a protracted period of time; and 5) taking action to qualify for the ballot under Illinois law.

Complainant concedes no violations regarding four of these five factors, but claims that the Candidate raised too much money, one single C.F.R. factor (factor 2) during her less-than-two-month exploration. Complainant's argument was flatly rejected by the Commission in MUR 6224 (*Fiorina*). There, the Commission held that, of the five factors listed to indicate if an individual is, in fact, a candidate, "one of those examples is the amount of money raised, *but no one factor is necessarily determinative.*" MUR 6224 at p. 6. *Fiorina* goes on to say that hiring

³ Complainant stated "Rotering was a candidate and should have registered with the FEC once she received or spent in excess of \$5,000..." (Cmplt. at 3). That is incorrect. As succinctly spelled out in the Campaign Guide for Congressional Candidates, at 1: "An individual who merely tests the waters, but does not campaign for office, does not have to register or report to the FEC. This is the case even if the individual exceeds the usual \$5,000 candidate registration threshold."

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political consultants to assist with advice on the potential and mechanics of constructing a...campaign organization and soliciting contributions to engage in "testing the waters" activities were within the exemption for exploration so long as the candidate was continuing to deliberate her decision. MUR 6224 at 7. Relevant also are the use of disclaimers, limiting a website to a "barebones" structure, limited meetings and appearances with voters or potential supporters, and not authorizing using the reference "candidate" before the declaration of candidacy. Finally, the Commission declared that a 41-day period for exploration did not constitute a "protracted time period, but that "'testing the waters' activities beyond a period of several months" might affect applicability of the exploratory exemption. In the instant case, Respondents did nothing more (indeed, much less) than what the *Fiorina* respondents did.

Complainant wants a finding that the "testing the waters" period stretching from January 29, 2015 to March 2, 2015 (15 days before a Form 2 would be due), a period of 33 days, is too long, simply because over \$5,000 was speedily raised. And Complainant wants a finding that the one *single* factor of "amount of money raised" be held determinative of a violation. On both issues, *Fiorina* decisively holds otherwise. The allegations in the Complaint are without foundation.

III.

THE ATTACHED AFFIDAVIT MAKES CLEAR THERE WERE NO VIOLATIONS OF FECA. THIS CASE SHOULD BE SUMMARILY DISMISSED.

Although Respondents are under no burden to prove anything at this juncture in the proceedings, they also submit the Affidavit of Michael Kreloff, the volunteer attorney and Treasurer for the campaign committee. A review of that document and attached exhibits reveals:

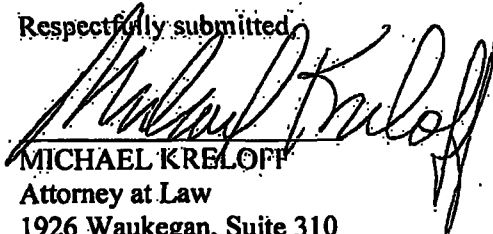
- 1) There was no active website during the entire exploratory phase of the campaign;

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- 2) The bank account was named "Nancy Rotering Exploratory Committee", and checks were routinely made out to that entity, so contributors understood this was not yet an actual campaign but only clearly an exploratory committee;
 - 3) There were no blast emails sent during the exploratory phase;
 - 4) Any written materials made clear that the candidate was only "testing the waters", and the embryonic campaign never held Ms. Rotering out as an actual candidate;
 - 5) Expenditures were made during those weeks only for appropriate "testing the waters" activities, such as polling and meeting with potential supporters, strategists, and contributors;
 - 6) No news reports ever quoted the Candidate to be anything more than one engaged in campaign exploration of viability;
 - 7) Excluding the Candidate's personal funds, the Committee raised \$166,843 from others during the pre-announcement period; and
 - 8) The brevity of the pre-announcement period and the strict limitations/prohibitions the campaign imposed upon overt political activities leads to the inescapable conclusion that there is "no reason to believe" that Candidate Rotering did anything but conduct a lawful exploratory operation until, on or about March 3, 2015, she made the decision to run.
 - 9) Complainant's failure to even allege violations concerning the other four factors (factors other than monies raised during a 33-day period) is the most eloquent argument justifying dismissal of this Complaint forthwith.

CONCLUSION

For all the foregoing reasons, Respondents maintain they are entitled to a summary dismissal of this Complaint, because the undisputed facts reveal no reason to believe a FECA violation occurred. No further action should be taken by the Commission on this Complaint, unfounded both in fact and in law.

Respectfully submitted,



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capitolaction@yahoo.com

Attorney for Respondents

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AFFIDAVIT OF MICHAEL KRELOFF

Michael Kreloff, being first duly sworn, states as follows:

- 1) I have personal knowledge of the facts set forth in this affidavit, and if called as a witness, I could competently testify to these facts;
- 2) I am an Illinois-licensed attorney, and in January, 2015, volunteered to assist the campaign of Nancy Rotering as she explored, and later determined to run for election to Congress in Illinois' 10th Congressional District for the 2016 cycle. In so doing, I reviewed the Rules and Regulations in FEC and government publications. I also reached out to the FEC via telephone (in January, 2015) to discuss with FEC staff how "testing the waters" rules related to a subsequent decision to actually declare for office. I understood there was "wide latitude" and that it was permissible to lay the groundwork for the potential candidacy;
- 3) I read from the FEC Campaign Guide for Congressional Candidates, at 1: "An individual who merely tests the waters, but does not campaign for office, does not have to register or

report to the FEC. This is the case even if the individual exceeds the usual \$5,000 candidate registration threshold;"


- 4) I then reviewed law with the potential Candidate and appropriate volunteers and staff for this exploratory phase, and the law regarding "testing the waters." We agreed that the Ms. Rotering, who would commence exploration in January of 2015, should try to make a "go or no go" decision by March 31, 2015, so that the public would see transparency through the campaign's disclosure of a first quarter report. This would also ensure that the exploratory phase, should it evolve into an actual campaign, would not be conducted over an unreasonably protracted period of time;
- 5) During the exploratory phase, while the potential candidate was making up her mind whether to run, everyone was cautioned to make clear this was an "exploratory committee; See Ex. A, an email invitation to meet Nancy Rotering, "a potential 10th congressional district candidate, Nancy Rotering" on February 17, 2015. See Ex. B, a handout for meeting with potential endorsers and contributors, with the tag line of "Democrat Exploring A Run for Congress in Illinois 10";
- 6) There was no active website during the entire exploratory phase of the campaign; a "splash page" invoice (Ex. C) reveals that it was not until March 17, 2015 (about two weeks after the decision to run) that the candidate went "on-line";
- 7) The bank account was named Nancy Rotering Exploratory Committee, and checks were routinely made out to that entity (samples attached), so contributors understood this was not yet an actual campaign but only an exploratory committee; Ex. D;
- 8) There were no blast emails sent until after the exploration had ended and, on March 17th, the campaign had begun;

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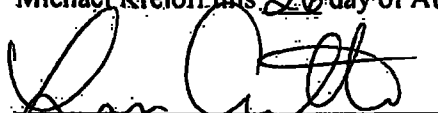
- 9) Any written materials made clear that the candidate was only "testing the waters", and the embryonic campaign never held Ms. Roterling out as an actual candidate. See Ex. E, a finance "thank you letter" on "Exploratory Committee" letterhead and referencing that Ms. Roterling was "exploring a run", and "talking" with friends and neighbors" to "explore this opportunity";
- 10) Expenditures were made during those weeks only for appropriate "testing the waters" activities, such as polling and meeting with potential supporters, strategists, and contributors. See FEC First Quarter 2015 Report;
- 11) No news reports ever quoted the Candidate to be anything more than one engaged in campaign exploration of viability; See Ex. F, where, on February 13, 2015, Chicago Tribune reporter Greg Trotter references "exploring the possibility of a run";
- 12) Excluding the Candidate's personal funds, the Committee raised \$166,843 from others during the pre-announcement period. See FEC First Quarter 2015 Report;
- 13) In early March, 2015, I spoke to the potential Candidate, who had made her decision to become an active Candidate and asked me to prepare the FEC Forms 1 and 2 for her review;
- 14) The brevity of the pre-announcement period and the strict limitation the campaign imposed upon overt political activities leads to the inescapable conclusion that there is "no reason to believe" that Candidate Roterling did anything but conduct a lawful exploratory operation until, in early March, 2015, she made the decision to run;
- 15) Complainant's failure to even allege violations concerning the other four factors (factors other than monies raised during a 33-day period) is the most eloquent argument justifying dismissal of this Complaint forthwith; and

16) I reviewed Ravel, "Delaying your candidacy doesn't mean you can avoid campaign finance rules", cited by Complainant at pp. 3-4.⁴ That article suggests our full *compliance* with FEC law, when it flatly rejects Complainant's contention that the mere spending of over \$5,000 transforms an exploratory committee into a candidate committee. It does not.⁵

FURTHER, affiant sayeth not.


MICHAEL KRELOFF

Signed and sworn to before me by
Michael Kreloff this 26 day of August, 2015.


NOTARY PUBLIC



⁴ https://www.washingtonpost.com/opinions/if-it-walks-like-a-candidate-and-talks-like-a-candidate-/2015/03/31/87a91a14-d490-11e4-8fce-3941fc548f1c_story.html

⁵ "Once individuals raise or spend even a modest amount of money-\$5,000-while considering a candidacy or actually campaigning,...they are *either* exploring a run for office *or* they are candidates." (emphasis supplied). Ravel at 1-2. The Rotering organization was clearly exploring a run for office-and *only* exploring a run for office-until early March, 2015. Only then did the effort lawfully convert into a candidate committee.

----- Forwarded Message -----

From:

To:

Sent: Monday, February 16, 2015 4:16 PM

Subject: Reminder: Tomorrow at my house

Just a reminder about the informal, get-to-know-Nancy-Rotering event at my house tomorrow night. Most of you have told me you can make it, so I hope you're still planning to join us. Very much looking forward to seeing you all!

WHAT: Meet and get to know Highland Park Mayor and potential 10th congressional district candidate, Nancy Rotering.

WHEN: Feb. 17, 6:30pm

WHERE: My house

Winnetka

Thanks.
Nancy

<https://us-mg5.mail.yahoo.com/neo/launch?.rand=3v106d5d4bol2#2678066725>

1/2

Ex. A



NANCY ROTERING

MOTHER, MAYOR, ADVOCATE.

DEMOCRAT EXPLORING A RUN FOR CONGRESS IN ILLINOIS 10.

Nancy Roterling grew up and attended public school in Highland Park, IL. After earning her undergraduate degree in economics from Stanford and an MBA from Northwestern, Nancy worked in finance at General Motors before attending the University of Chicago Law School. She specialized in health care law, practicing at a nationally recognized law firm, before stepping off the corporate ladder to raise her family in Highland Park.

A strong advocate for her community, Nancy volunteered as a Cub Scout Master, soccer coach, PTO President and City Commissioner. Putting her health care and legal background to work, she advocated for the health and safety of students in the classroom, winning a fight to change state law to provide children with professional health services at school.



Her work on environmental and community issues helped her defeat a 20-year incumbent on the Highland Park City Council. With two years left on her term, Nancy ran and won a hard-fought victory to become the first woman Mayor of Highland Park. During her first term she shook up City Hall with major reform of city government that resulted in transparency, accessibility, collaboration and ethics for residents.

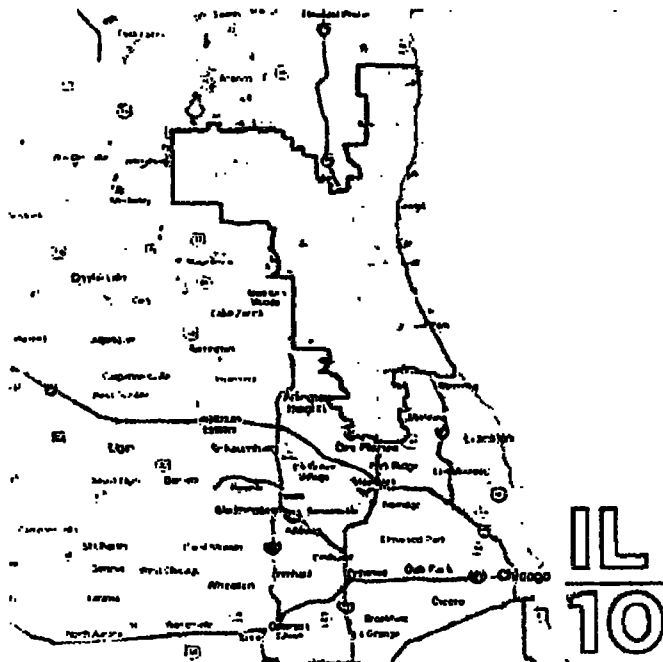
As Mayor of Highland Park, Nancy has made it her mission to bring people from varied backgrounds, different communities and interests together to tackle some of our toughest problems, focusing on public works and economic development, and banning assault weapons. She balanced four budgets, maintained a Aaa credit rating while shoring up pension funds for public safety workers.

Washington needs women like Nancy Roterling. Collaborating with others to solve problems is exactly what we need in Washington. Nancy has a talent for getting things done and making government work for our families. She's led fights to preserve women's rights, protect Lake Michigan and foster economic development for Chicago's North Shore.

Nancy's background in the field of health care law will help her preserve and improve access to affordable health care.

Ex. B-1



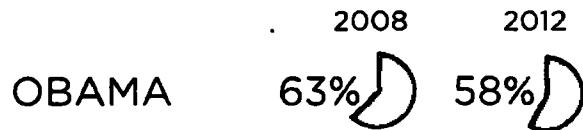


About the 10th Congressional District.

Illinois' 10th district stretches from Des Plaines and Wheeling in the South, and runs up the North Shore past Waukegan and North Chicago to Winthrop Harbor.

Highland Park, where Nancy is Mayor, is in the heart of the district.

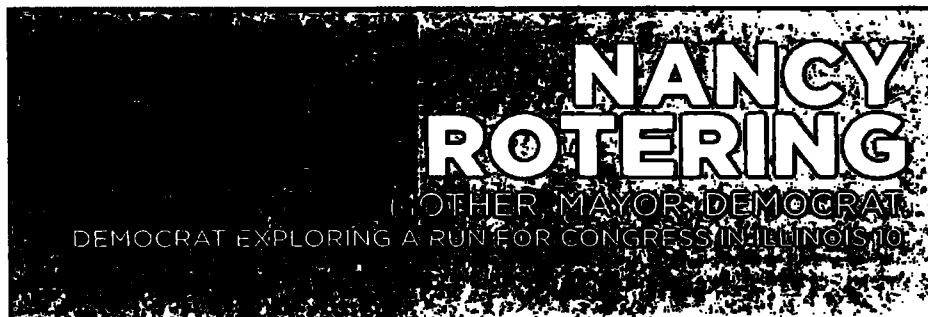
President Obama won the 10th with 63% of the vote in 2008, and with nearly 58% in 2012. In 2014, Senator Dick Durbin bested Republican Jim Oberweis by ten percent, 53% to 43%. According to NCEC, DPI in the district is 56%. The Cook Report rates IL10 as D+8.



DURBIN: **53%** | OBERWEIS **43%**

D+8

DOLD 52



Nancy@FriendsOfNancy.com
847-772-4541

Printed in house

Paid for by Nancy Roter Exploratory

Ex. B-2

16044482700

PAID

 Print  PDF  Receipts ▾

INVOICE: NRC-SplashPage & Logo Options



Media House LLC
2055 Green Bay Road
Highland Park, IL 60035
United States
Tel: 847-609-5646
www.mediahoucelc.com

Bill to:
Nancy Rotering
Nancy Rotering

Invoice number: NRC-SplashPage & Logo Options
Invoice date: March 11, 2015
Due date: March 11, 2015
Amount due: \$0.00

Product	Qty	Price	Amount
Splash Page - Email Setup NR for Congress Splash page, hosting for 1st year, FB & Twitter setup, Email address setup.	1	\$1250.00	\$1,250.00
Logo Options	1	\$200.00	\$200.00

Ex. C

NANCY ROTERING
EXPLORATORY ACCOUNT

Pay to the order of

2-15/710

1026

1026

2/15/71

1026

\$

1026

← Mark
in



THE NORTHERN TRUST COMPANY
Northern Trust

1026

100044400000

Ex. D-1

1604440001

EDWARD P. GAMSON
BRYNA G. GAMSON

JOINT OWNERS

70-2250/719

9654

HIGHLAND PARK, IL 60035

DATE JAN 17, 2015

PAY TO
THE ORDER OF

Harvey ROBERTS EXHIBITARY

\$ 1,000.00

One thousand and 00/100

DOLLARS

← Heat
Sensitive
Ink

Platinum

EX D-2

0974
70-6240/2718

243/15
C. DeLo
Nancy Robering Exploratory \$ 300.00
Three hundred & 00/100 Dollars

BCU www.bcu.org

To _____
Matahi Ju

Ex D-3

110044440001

10908

BRADLEY COHEN
JACQUELINE MILLER COHEN
HIGHLAND PARK, IL 60038

CHASE
JPMorgan Chase Bank, N.A.
www.Chase.com
2-1-710



1-19-2015

PAY TO THE
ORDER OF

three hundred dollars exploratory

\$300.00

300 DOLLARS
TWO

MEMO donation

Jacqueline Miller Cohen
AUTHORIZED SIGNATURE

Ex. D-4

Ex D.5

**NANCY
RODKIN
ROTHERING**
EXPLORATORY COMMITTEE

Jack Ablin

Highland Park, IL 60035

Dear Jack,

It was great catching up with you! Thank you so much for your contribution to my campaign. It will be a huge help as we move forward.

As we discussed, I'm currently exploring a run for United States Congress. We need strong leadership in Washington! I love serving as Mayor of Highland Park, but this is a unique opportunity to help our community and the district we love.

I will take the next few weeks talking with our friends and neighbors about the federal issues on their minds and their thoughts about my candidacy. Your support will enable me to truly explore this opportunity. As you know, campaigns require a great deal of money, and I'm so appreciative that you're willing to help me at this stage.

I will continue to keep you posted as I move ahead, but if you ever need anything or if you have any questions please feel free to contact me. Thank you again for your early support. I'm humbled by this opportunity, and am excited to see where the future leads.

All the best,

Nancy

Paid for by the Nancy Rothering Exploratory
Committee

Printed in-house

EXE

From: "Trotter, Greg" <gtrotter@chicagotribune.com>
Subject: possible 2016 run
Date: February 13, 2015 at 12:53:15 PM CST
To: "nrotering"

Hi, Nancy,

I may end up writing a little something about you exploring the possibility of a run against Dold in 2016. To that end, I had a few additional questions for you...

- 1) Is there something about Dold's leadership or politics in particular that has you mulling a run?
- 2) What are some of the factors in your consideration? I know you said you're still gauging people's interest. But are there other factors? For example, I know you have kids in high school. Is that something you're considering, being away from family, etc.?
- 3) How has being the mayor of Highland Park prepared you for the possibility of representing the 10th District in Congress?

I'm probably filing this story by the end of Monday.

Thanks, Greg

Gregory Trotter, reporter | Chicago Tribune | 312-731-0135 (mobile) | gtrotter@tribune.com

<https://us-mg5.mail.yahoo.com/neo/launch?.rand=3vi06d5d4bcl2#4924999424>

2/3

Ex. F